Filed 11/30/16 In re Q.W. CA2/1

NOT TO BE PUBLISHED IN THE OFFICAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Q.W., a Person Coming Under the Juvenile Court Law.	B269682 (Los Angeles County Super. Ct. No. DK02968)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.B., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Emma Castro, Judge. Affirmed.

Lelah S. Fisher, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

R.B. (Mother) appeals from the juvenile court's jurisdiction and disposition orders made after the juvenile court adjudged her daughter, Q.W. (born in 2015) a dependent under Welfare and Institutions Code[1] section 300, subdivisions (b), (g) and (j). Mother contends that the evidence did not support the jurisdictional findings or the disposition order removing Q.W. from parental custody. We disagree. As we shall explain, Q.W.'s sibling, I.R. (born in 2010), is also the subject of dependency proceedings and sufficient evidence showed a substantial risk existed that the parents would neglect Q.W. in the same manner as her sibling. In addition, at the time of adjudication in Q.W.'s case, the parents were receiving family reunification services with I.R. and were not in compliance with the court-ordered case plan. Accordingly, we affirm the court's orders exercising dependency jurisdiction and removing Q.W. from parental custody.

FACTUAL AND PROCEDURAL HISTORY

A. *Prior Dependency Proceedings*

In addition to Q.W. and I.R., Mother has two other children, P.D. and M.D. In 2007, the Department of Children and Family Services (DCFS) substantiated allegations of neglect and emotional abuse to P.D and M.D. based on Mother's behavior such as trying to jump out of a moving car with one of the children, and telling them she was a witch and would cast spells on them. Mother has not had contact with P.D. and M.D. since 2010, having relinquished custody to their paternal aunt.

In May 2014, the juvenile court sustained a section 300 petition on behalf of I.R. which alleged under subdivisions (b) and (g) that in January 2014, Mother was incarcerated and had failed to make an appropriate plan for I.R.'s care. The court also sustained paragraph b-2 that alleged that W.R., I.R.'s and Q.W.'s father[2] (Father), repeatedly fell asleep while I.R. was under his care and supervision; and paragraph b-3 that alleged Mother and Father neglected I.R.'s dental and medical health. The court declared I.R. a juvenile

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[1] All statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

[2] W.R. is not a party to this appeal.

dependent, removed the child from parental custody, and ordered DCFS to provide family reunification services.[3]

B. *Current Proceedings*

On January 12, 2015, the day of Q.W.'s birth, DCFS received a referral alleging general neglect of Q.W. Although Q.W. appeared to be healthy and stable, the referral indicated that upon her hospital admission, Mother began exhibiting unstable and paranoid behavior including cursing at and being aggressive towards staff, and being uncooperative. The report also disclosed that Mother was taking pain medication for her rheumatoid arthritis and sickle cell anemia and that Mother had refused a transfer to another hospital where she could receive better care for her health conditions. It was also reported that Father acted paranoid and uncooperative and that the parents were adamant about leaving the hospital that evening. The emergency response social worker met with the parents to discuss the situation and noticed that Father would fall asleep while holding the newborn.

Two weeks later, DCFS received two additional referrals of neglect indicating that Mother had come to a hospital emergency room with arthritis and sickle-cell pain and was admitted to the intensive care unit. Mother and Father had refused to make alternative arrangements for Q.W., who was staying with the parents in Mother's hospital room in the infectious disease unit. The medical staff required that Q.W. be removed. Eventually, Father left the hospital with Q.W., and against medical advice, several hours later Mother left. The second referral indicated that the parents engaged in similar conduct at another hospital a few days later; Q.W. and Father were

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[3] The court ordered Mother to participate in a mental health assessment and participate in individual counseling, alcohol counseling, alcohol testing, drug counseling, and random drug testing. The court ordered Father to participate in individual counseling, a parenting program, and drug and alcohol abuse counseling and testing. Father appealed the disposition order for drug and alcohol testing, and DCFS agreed that the order was not warranted by the evidence. In February 2015, this court reversed the disposition order for drug and alcohol testing and affirmed the remainder of the disposition orders. (*In re I.R.* (Feb. 11, 2015, B256667) [nonpub. opn.] at pp. 1-2, 10.)

staying in Mother's hospital room in the intensive care unit, that Mother had mental health issues and was feeding the baby with an empty bottle. Hospital staff had asked Father to hold the baby but he fell asleep. After the parents left the hospital, the social worker went to the address Mother had given as their home address, and discovered the family had never resided at that location.

On February 3, 2015, DCFS filed a section 300 petition under subdivision (b), alleging that Mother had emotional and mental health problems that placed Q.W. at risk and that Father failed to protect Q.W. DCFS reported the family's whereabouts were unknown. The juvenile court issued a protective custody warrant for Q.W., arrest warrants for the parents, and an order to detain Q.W. from parental custody.

When the family was located several weeks later, Mother was being held in county jail on a probation violation. The social worker reported that Mother had at least two aliases and that Mother had been in custody twice within the past year while pregnant. The jurisdictional reports disclosed that the parents denied that Mother had mental health or emotional problems and sickle cell anemia. When questioned about her lack of participation in the court-ordered family reunification services in I.R.'s[4] case, Mother claimed she could not participate in services because she had been incarcerated, and that in any event, she would not participate in any of the court-ordered programs because she felt they were unnecessary.[5]

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[4] In March 2015, the court consolidated Q.W. case with I.R.'s dependency case.

[5] As of August 2015, neither parent had complied with the court-ordered plan in I.R.'s case. Father reported that he was homeless, very busy, and would not comply with any court-ordered programs. Father had visited I.R. about nine times, for less then an hour and Mother had no contact with I.R. DCFS recommended that reunification services be terminated and the case be set for a section 366.26 hearing.

1. *First Amended Petition in Q.W.'s Case*

In October 2015, DCFS filed a first amended petition, adding allegations under section 300, subdivision (g) and (j): that Mother was incarcerated and unable to make an appropriate plan for Q.W.'s care (allegations (g) and (j-1)); that in 2014 Father placed the child I.R. in danger by repeatedly falling asleep while the child was in his care at the hospital (allegation (j-2)); that the parents neglected I.R.'s medical condition and health needs (allegation (j-3)); and that the parents' treatment of I.R. posed a risk of harm to Q.W.

The supplemental jurisdictional report revealed that in June 2015, Mother was convicted and sentenced for felony perjury and obtaining money by false pretense. Her expected release date from jail is January 5, 2017. Mother also reported that she received Social Security benefits based on her rheumatoid arthritis and sickle cell anemia. Mother explained that because they had no home, she, I.R., and Father would go to hospitals, where she could receive free medication and treatment, and I.R. and Father would stay in Mother's hospital room, sometimes for an entire week. Mother believed this was a perfect arrangement because they had a bed, television, and food. Mother explained this was why she had used several aliases. Mother said she did not go to hospitals because she was sick but for housing, and once admitted into the hospital they stayed as long as they could. Mother claimed that she had no mental health issues but pretended to have mental health problems so she could remain hospitalized. Mother told the social worker that staying in hospitals "worked" when they had I.R. so they did it with Q.W. She denied that having Q.W. and I.R. stay with her in the hospital exposed them to infections. Mother further denied that she and Father had failed to attend to I.R.'s health and medical conditions; and although Father fell asleep watching the children in the hospital, Mother claimed it did not prevent him from caring for them.

On October 19, 2015, Mother filed written objections under section 355 to third party statements found in DCFS's detention and jurisdiction reports about Mother's behavior during the hospital stays.

2. *Adjudication of Q.W.'s Case*

At the December 28, 2015, jurisdiction hearing, the parents asked the court to dismiss the petition. Mother argued that DCFS had not provided any evidence that Mother had any mental health diagnosis or illness that would place Q.W. at risk as alleged in b-1.[6] As to counts g-1 and j-1, Mother argued that although she was incarcerated, DCFS had not proven Q.W. would be at risk in Father's custody and, therefore, Mother's incarceration did not place the child at risk. Mother also requested that Q.W. be placed with Father during her incarceration. The court sustained allegations b-1, g-1 and all of the allegations under subdivision (j), noting that the language alleged under subdivision (j) had already been sustained in I.R.'s case.

The court continued the disposition to the next day. During the disposition hearing, DCFS's counsel and Q.W.'s attorney asked the court to remove the child from the parents' custody. Neither Mother nor Father expressly opposed the removal order. Father's attorney asked the court to order unmonitored visits and advised the court that Father would complete his parenting program and a mental health evaluation in January 2016. Mother's attorney indicated Mother would be willing to participate in the programs and asked the court to order reunification services. The court noted its concern that Mother and Father had a history of instability, had given false information about their address, and resisted removing Q.W. from an infectious ward unit at the hospital. The court also noted the parents' open dependency case with I.R.; that the parents were not in compliance with the case plan for I.R., and that Mother was incarcerated. The court removed Q.W. from parental custody and ordered reunification services and monitored visits.

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[6] In October 2015, in connection with I.R.'s case, Mother underwent a psychological evaluation. The evaluator reported that although Mother had no psychiatric diagnosis and showed no signs of chronic mental illness, it was possible Mother could physically or emotionally abuse I.R because of Mother's lack of resources and support.

Mother filed a timely notice of appeal.[7]

DISCUSSION

I. *Sufficient Evidence Supports the Dependency Court's Exercise of Jurisdiction*

Mother challenges the court's jurisdictional findings under section 300, asserting that they lacked evidentiary support. We disagree; substantial evidence supports the dependency court's exercise of jurisdiction under subdivision (j) of section 300. (*In re I.J.* (2013) 56 Cal.4th 766, 773 [the appellate court reviews the dependency court's jurisdictional findings].)

The sustained petition alleged that Q.W. came within subdivisions (b), (g) and (j) of section 300. The juvenile court's jurisdiction, however, may rest on a single ground." (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127; see also § 300 ["[a]ny child who comes within *any* of the following descriptions is within the jurisdiction of the juvenile court"].) "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *see also, In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 ["reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds"].)

As our Supreme Court explained in *In re I.J.*, *supra*, 56 Cal.4th at p. 774, "Subdivision (j) applies if (1) the child's sibling has been abused

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[7] On June 30, 2016, this court granted Mother's request for judicial notice of the subsequent dependency orders in this case, which disclose, *inter alia*, that in April 2016, the court ordered that Q.W. be assessed by the regional center for services; and that in June 2016, the court issued a "Home of Parent Order" for I.R. to be placed with Father and in October 2016, after Father found suitable housing, the court ordered the permanent plan for I.R. to return to the home of Father.

or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (§ 300, subd. (j).)" Here, Mother concedes that Q.W.'s sibling I.R., was declared a dependent under subdivisions (b) and (g) based on sustained allegations that I.R. suffered medical neglect, that Father had failed to properly supervise and care for I.R. while they were staying at the hospital with Mother, and that Mother had not made an adequate plan for I.R. while Mother was incarcerated. (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 804). Thus, the first requirement of subdivision (j) is satisfied. (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.)

Turning to the second requirement under subdivision (j), Mother argues that the evidence did not show the same parental conduct that placed sibling I.R. at risk also placed Q.W. at risk. It was not necessary, however, to prove the *actual* conduct that placed I.R. at risk also placed Q.W. at risk, only that there was a substantial risk Q.W. would be neglected or abused in the same manner. As the *I.J.* Court stated, " '[S]ubdivision (j) was intended to expand the grounds for the exercise of jurisdiction as to children whose sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i). Subdivision (j) *does not* state that its application is limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivisions (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child's sibling.' " [Citation.] (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.)

"Unlike the other subdivisions, subdivision (j) includes a list of factors for the court to consider: 'The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.' (§ 300, subd. (j).) 'The "nature of the abuse or neglect of the sibling" is only one of many factors that the court is to consider in assessing whether the

child is at risk of abuse or neglect in the family home. Subdivision (j) thus allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.' [Citation.]" (*In re I.J., supra,* 56 Cal.4th at p. 774.)

By Mother's account, she and Father engaged in the same pattern of conduct and parental care with Q.W. as they had with I.R. which the court found neglectful, and which caused I.R. to become the subject of dependency jurisdiction. As they had done with I.R., Mother and Father took the infant, Q.W., to hospitals to stay, sometimes for an entire week, in Mother's room while Mother received treatment and pretended to have mental health issues to prolong the hospitalization. Although Mother believed this was a "perfect arrangement," it placed Q.W. at risk by exposing the infant to infections and other hospital-borne illnesses. Under this arrangement, Father shouldered the primary caretaking duties of Q.W., and as with I.R., Father was inattentive; he fell asleep while watching the baby. Although Mother was incarcerated by the time of the adjudication proceedings, Mother's statement to the social worker, extolling her use of hospitals for room and board suggests that once released from custody Mother and Father would resume their prior pattern of behavior. The totality of these circumstances—the exposure of the Q.W. to the dangers of living in the hospital—placed the child at substantial risk of harm under subdivision (b) and provided sufficient evidentiary support to the dependency court's determination that Q.W. was a person described by section 300, subdivision (j).[8]

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[8] In view of our conclusion that sufficient evidence supports the jurisdictional findings under subdivision (j), we need not assess Mother's challenge to the subdivision (g) and (b) findings. (*In re I.A.* (2011)

II. *No Basis Exists to Reverse the Juvenile Court's Disposition Order Removing the Child from Mother's Care, Custody, and Control*

Mother argues the court erred in removing Q.W. from parental custody.[9] We disagree.

As relevant here, section 361, subdivision (c)(1), provides that "[a] dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence" that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." "The parent need not be dangerous, and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) " '[O]n appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the

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201 Cal.App.4th 1484, 1492 ["appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence"].)

[9] DCFS contends Mother forfeits an appellate challenge to the disposition because she failed to object to the removal order during the disposition hearing. Although neither Mother nor Father expressly objected to the disposition order at the jurisdiction hearing, Mother clearly articulated her desire that the child remain with Father while she was incarcerated. We infer from this statement and the totality of her arguments during the adjudication proceedings that Mother did not intend to acquiesce to DCFS's recommendation that Q.W. be removed from parental custody. Accordingly, we decline to apply the forfeiture doctrine to this claim.

appellant's evidence, however strong." ' " (*In re J. I.* (2003) 108 Cal.App.4th 903, 911.)

Sufficient evidence supports the juvenile court's decision to remove Q.W. from the parents' care, custody, and control. Q.W. was not removed from parental custody solely because Mother was incarcerated and unable to make a suitable plan for the child. Likewise, the court did not remove Q.W. from Father based on his homelessness and lack of employment. Although the court expressed concern for these circumstances, the court also relied upon uncontroverted evidence that neither parent had fully complied with the case plan for I.R. Consequently, they had not addressed the primary issues and concerns that caused the family's involvement with DCFS and the dependency court. Sufficient evidence supported the juvenile court's finding that there was substantial danger to the physical health, safety, and protection of Q.W. if she were returned home, and that there were no reasonable means to protect Q.W.'s safety without removing her from parental care. No grounds exist to reverse the disposition order.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

JOHNSON, J.